

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.11.2020

Coram

The HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.11784 of 2020

and

WMP.Nos.14496, 14499 & 14850 of 2020

Karmaveerar Kamarajar Section
Writers Progresssive Association,
No.2, Kanndasan Street,
Thanthai Periyar Nagar,
Thirumullaivoyal,
Chennai - 600 062.

rep. by its President A.Rajaguru.

..... Petitioner

vs.

1.The Chief Electoral Officer
& Principal Secretary to Government
Public (Election V) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2. The District Election Officer/Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

3. The District Revenue Officer,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records on the file of the first respondent in G.O.Ms.No.239 Public Election (v) Department dated 13.07.2020 and quash the same by extending the said benefit to the Members of the petitioners' Association and direct the 1st respondent to confer the benefits of one year extension from 20.03.2020 granted to the Section Writer of Kanchipuram and Thiruvallur by G.O.(D) No.239 Public Elections (V) Department dated 13.07.2020 to the Members of the Petitioner's Association also.

For Petitioners .. Mr.Gnandesikan,
Senior counsel forthcoming
M/s. Gnanadesikan Law Associates

For Respondents ... Mr.J.Pothiraj,
Special Government Pleader
for R1
Mrs.Karthika Ashok,
Standing Counsel for R2 and R3

O R D E R

This matter is taken up through Web hearing.

2. The writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for records on the file of the first respondent in G.O.Ms.No.239 Public Election (v) Department dated 13.07.2020 and quash the same by extending the said benefit to the Members of the petitioners' Association and direct the 1st respondent to confer the benefits of one year extension from 20.03.2020 granted to the Section Writer of Kanchipuram and Thiruvallur by G.O.(D) No.239 Public Elections (V) Department dated 13.07.2020 to the Members of the Petitioner's Association also.

3. The petitioner is a registered Association under the provision of the Tamil Nadu Societies Registration Act, 1975. The Association, according to the averments in the affidavit filed in support of the writ petition, has been formed for espousing the cause and interest of its members who are working as Section Writers on temporary basis in Election Department in Chennai District from 2007 onwards.

4. According to the affidavit, the Section Writers, of whose interest the present writ petition has been filed, have been involved in the election work through out the year with reference to preparation of photo electoral roll, preparation of Manuscript for inclusion, Deletion, Shifted and Dead Voters Form VI, VII, VIII and VIII-A, 001C to be received and registered to be maintained, comparison of inclusion/ deletion to be made after making data entry/ after scanning particulars to be collected from Assembly Constituency, notice to be issued to the Shifted Voters for deletion from Electoral Roll.

5. According to the Association the Election Officer in each District continued to engage their services for the afore mentioned and related work.

6. The Government has been utilising their services for the last 13 years by granting extension of service every year. Since they have been continuously employed for the last several years, a Writ Petition was filed by them in W.P.No.21101 of 2015 seeking regularisation of their services. The learned Judge of this Court, on 03.07.2018, dismissed the Writ Petition and as against which, a Writ Appeal in W.A.No.1907/2018 filed was also dismissed by the Division Bench of this Court on 03.09.2018. While dismissing the Writ Appeal, the Division Bench has also directed that the service of the Section Writers shall be continued till the end of 31st March, 2019.

7. Thereafter, the 1st respondent has issued G.O.(D).No.124 (Public Elections V) Department dated 26.04.2019 through which the services of the members of the Association were extended upto 30.06.2019. The similarly placed Section Writers working in the office of the District Election Officer, Kancheepuram and Tiruvallur, extension of service was granted for one year from 01.04.2019 to 31.03.2020. According to the Writ Petitioners, in the above said Government Order, the total posts covered for extension were mentioned as 171, including the members of the petitioner association numbering about 90 for Chennai District.

8. In the above circumstances, when the Writ Appeal was pending, they filed C.M.P.No.13512 of 2019 to extend their service also upto 31.03.2020 from 01.07.2019. On consideration of the C.M.P., the Division Bench passed a direction on 09.07.2019 as under.

"9. On a reading of the Government Order in G.O.(D) No.124, dated 26.04.2019, we find that all the District Election Officers, viz., Chennai, Tiruvallur and Kancheepuram have uniformly certified that the Section Writers working under them are well experienced and well acquainted with various duties and responsibilities assigned to them which clearly shows that their services are indispensable. However, it is not clear as to why the District Election Officer of Chennai District requested for continuance of 90 Section Writers only for a period of three months, when the counter affidavit filed in the writ petition clearly indicates the continued engagement of these Section Writers in Chennai District also. Presumably because there was such a request, the Government has extended the service for three months till 30.06.2019 and for the Section Writers in Tiruvallur and

Kancheepuram for one year up to 30.03.2020, since we find the recommendation which found acceptance by the Government culminating in G.O.(D) No.124, was uniformly in respect of three Districts certifying their need. Therefore, we find that the members of the petitioner Association, who are working as Section Writers in the District Election Office and Office of the Commissioner Greater Chennai Corporation, Chennai should also be permitted to continue till 30.03.2020 as extended to those Section Writers working in Thiruvallur and Kancheepuram.

10. Needless to state that since the members of the petitioner Association are continuing to discharge their functions as Section Writers on daily wages basis, they have to be paid wages till they are engaged. The wages from 01.04.2019 is stated to have not been paid, which will be paid to the Section Writers."

9. According to the petitioner, despite the direction of the Division Bench, the same has not been complied with. Contempt notice was also issued on 27.08.2019. Thereafter, it appears that the Contempt Petition was filed. On behalf of the respondents, time was taken and however, the Contempt Petition could not be listed thereafter due to Covid-19 situation.

10. But subsequently, the Government issued another Government Order in G.O.(D).239 Public Elections (V) Department dated 13.07.2020 extending the service of Section Writers for one more year who are working in Tiruvallur and Kancheepuram Districts. But the said extension was not granted to the Section Writers working in Chennai District. Since, the action of the Government was per se discriminatory and arbitrary, the petitioner is before this Court, challenging the G.O.(D) 239 dated 13.07.2019 insofar as it restricts the extension only to Kancheepuram and Tiruvallur District is concerned.

11. Mr.Gnanadesikan, learned senior counsel for the petitioner has strenuously submitted that whenever extension is granted by the Government, such extension over the years has always been covering all the three Districts viz., Chennai, Tiruvallur and Kancheepuram. Unfortunately, after the petitioners herein had approached this Court for enforcing their right towards regularisation of their services, the Government has taken a vindictive action in not to extend the services of these

persons even on the same terms and conditions, which they have been doing for the last several years.

12. Notice was ordered in the writ petition and Mrs. Karthika Ashok learned Standing counsel strongly resisted the claim of the petitioner. Although a detailed counter affidavit has also been filed, this Court does find any strong material as to why the members of the petitioner association could not be engaged in the election related work for this year also under the latest extension given to Kancheepuram and Tiruvallur District. From the counter affidavit what would be gathered is that the respondents have not treated the members of the petitioner with parity ostensibly because they have approached this Court earlier for regularisation of their services. In fact, in the counter affidavit, it is averred that the 2nd respondent is proposing to engage manpower agency to continue with the election related work.

13. When the same election related work is to be carried out through another source of adhoc arrangement, this Court is unable to appreciate as to why the same work could not be extracted from the members of the petitioner association who have vast experience in the work being engaged for over a decade or so. In any case, their main grievance that their services should be regularised has been negatived and as a matter of consolation, the members of petitioners' association can atleast be engaged on adhoc basis during the present extended period.

14. When the Section Writers have been granted extension in the neighbouring Districts for the election related work, it is all the more reason why the same cannot be extended to these petitioners as well. The non-extension of service to the petitioners herein appears to be lacking in bonafides and also lacking in good faith.

15. Although the learned counsel for the respondent put up a stiff resistance to the grant of any relief to the petitioners, this Court in consideration of the plight of the petitioner and the members of the association and also in consideration of the fact that not regular hands are going to be engaged for the election related work for the present period, the utilisation of the service of the petitioners' appears to be the best option for the respondents, as such arrangement would be mutually beneficial to both the respondents and the petitioners as well.

16. In the counter affidavit, it is averred in paragraph No.9 that the Government will consider the proposal mooted from the District Election Officer concerned. From the entirety of the averment in the counter affidavit, it could be seen that

there is abundant election related work available to engage the services of the persons and in the counter affidavit, it is also stated about the indifference shown by the members of the association towards attendance and discharge of their duties. However, this Court is not inclined to go into those factual issues but the fact of the matter is that the members of the petitioner association are today seeking the benefit of extension, which means, they are willing to be engaged for serving in the extended period also and the Government is also willing to consider the claim if any proposal is not made in this regard by the competent authority.

17. In the above circumstances, without going into the other areas of controversy, the 2nd respondent is directed to forward the proposal for engaging the members of the petitioner association who have been working in the District Election Office, Chennai, within a period of one week from the date of receipt of a copy of this order.

18. On the proposal being forwarded by the 2nd respondent, the 1st respondent is directed to pass similar order in the lines of G.O.(D).No.239 Public (Elections.V) Department dated 13.07.2020 by granting extension of time by extending the period of employment till 31.03.2021 on the same terms and conditions as made applicable to the similarly placed employees. The 1st respondent is directed to pass appropriate orders in this regard within a period of two weeks from the date of proposal forwarded by the 2nd respondent in this connection.

19. The Writ Petition is disposed of as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
सत्यमेव जयते Assistant Registrar(CS III)

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To Sub Assistant Registrar

1.The Chief Electoral Officer
& Principal Secretary to Government
Public (Election V) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

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