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W.A.(MD)Nos.365 of 2020 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2020

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THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.A(MD)No.365, 366 and 368 to 372 of 2020

and

C.M.P. (MD)Nos.2568, 2670, 2571, 2572, 2579, 2581, 2580, 2582, 2584,
2585, 2586, 2587, 2588 and 2589 of 2020

Sundararajan	... Petitioner in WA(MD)No.365/2020
Vaithiyalingam	... Petitioner in WA(MD)No.366/2020
Sethupathi	... Petitioner in WA(MD)No.368/2020
S.Mohan	... Petitioner in WA(MD)No.369/2020
Jeyaraj	... Petitioner in WA(MD)No.370/2020
Sagayaraj	... Petitioner in WA(MD)No.371/2020
Marthandan	... Petitioner in WA(MD)No.372/2020

Vs.

- 1.The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (VI) Department,
Secretariat, Fort St.George, Chennai.
- 2.The Managing Director,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
4th Floor, CMDA Tower I,
Gandhi Irwin Bridge Road, Egmore, Chennai.
- 3.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC),
Office of the Senior Regional Manager, TASMAC,
Trichy.
- 4.The General Manager,
Tamil Nadu Ex-Service Men's Corporation (TEXCO),
No.2, West Monda Street, Srinagar Colony,
Saidapet, Chennai. ... Respondents in all WAs

Prayer in WA(MD)Nos.365, 366 and 368 to 372 of 2020:

This Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.1048, 1071, 1074, 1066, 1052, 1065, 1069 of 2020 respectively, dated 14.02.2020 on the file of this Honourable Court.

<https://hcservices.ecourts.gov.in/hcservices/>



Common Prayer:

Writ petitions filed under Article 226 of the Constitution of India, praying this Court Directing the respondents to regularise the service of the petitioners as Junior Assistant in the 2nd respondent Corporation from the date of initial appointment till retirement in the light of GO.MS.No.44 dated 12.7.2018 issued by the first respondent and consequently to pay all other monetary benefits on par with the other employees of the 2nd respondent corporation.

For Appellant :Mr.K.P.Sankarakumarakuruparan
For R1 :Mr.D.Muruganandam
For R2 to R4 :Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.B.Jameel Arasu

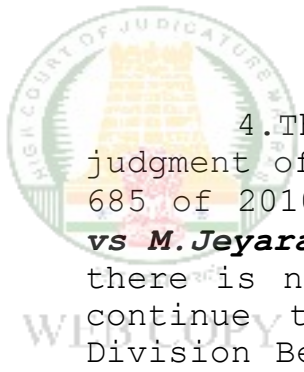
COMMON JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

The appellants are Ex-Service Men and they served in the Defence for quiet longer time and after discharging from Defence service, they have been recruited on contract basis by M/s.Tamil Nadu Ex-Service Men's Corporation (TEXCO) / fourth respondent and deployed in M/s.Tamil Nadu State Marketing Corporation Limited (TASMAC).

2.In all these appeals, the appellants have not disputed that they were engaged by TEXCO on contract basis and deployed in M/s.TASMAC on the basis of the agreement of TEXCO with M/s.TASMAC. The fourth respondent, in fact, directed the concerned employees, ie., ex-service men, for performing contract duties stated in the agreement at the project place requested. The appellants, after serving on contract basis for some time, have approached this Court, mainly on the ground that the services of temporarily employees, who were absorbed directly by M/s.TASMAC, had been regularised by issuing G.O.Ms.No.44, Home, Prohibition and Excise (VI) Department, dated 12.07.2018.

3.The appellants relying upon said the Government Order, stated that the same benefit should also be extended to the appellants, even though they are employed on contract basis. It is not in dispute that no privity of contract between the appellants and M/s.TASMAC. This Court do not agree that there is employer and employee relationship between appellants and M/s.TASMAC. The engagement of the appellants in M/s.TASMAC is purely on contract basis, based on the contract of service entered into between M/s.TASMAC and the fourth respondent. The appellants cannot compare themselves on par with the employees of M/s.TASMAC, who were engaged and recruited by M/s.TASMAC.



4.The learned Additional Advocate General relied upon the judgment of Division Bench of this Court in W.A.(MD)Nos.569, 570 and 685 of 2010, in the case of **The State of Tamil Nadu and two others vs M.Jeyaraj and another**, wherein, the Division Bench has ruled that there is no rule of law that a temporary appointee has a right to continue till a regularly selected candidate is available. The Division Bench considered the scope of employment of Ex-Service Men as Drivers through TEXCO based on the agreement entered into between District Collector and TEXCO for a limited period. It is held that the persons engaged or appointed on contract basis have no right to the post. The Government order to recruit drivers through Employment Exchange was upheld even though the Government has earlier passed Government Order to recruit 182 TEXCO drivers on contract basis.

5.The learned Additional Advocate General has relied upon yet another judgment of Division Bench of this Court in the case of **Kovail Mandala Ex-Service and Family Welfare Association and another vs Union of India and others**, reported in (2013) 8 MLJ 548. Before the Division Bench, the request of the Ex-service men, who were deployed by TEXCO on requisition from BSNL, was considered. After finding that the deployment of ex-service men was only on need basis and that the engagement of ex-service men was pursuant to a notification inviting tenderer from various labour contractors, the Division Bench has held that the decision of BSNL, rejecting the representation of the ex-service men for regularisation, was legal and proper.

6.The learned Single Judge, after considering the fact that the appellants are not employees of M/s.TASMAC, held that they cannot claim regularisation, as if they are direct employees of M/s.TASMAC. After following the principles of law reiterated in several judgments of Honourable Supreme Court, the learned Single Judge has rightly dismissed the Writ Petitions filed by the appellants. Having regard to the admitted facts and circumstances of the present case, we cannot show any indulgence to the appellants, who are not employees of the M/s.TASMAC.

7.The submission of the learned Counsel for the appellants that appellants should be treated on par with other temporary employees of M/s.TASMAC in terms of G.O.Ms.No.44, cannot be accepted, as there is no question of discrimination and the writ petitioners were not engaged by M/s.TASMAC, but by TEXCO, pursuant to the agreement between M/s.TASMAC and TEXCO. Hence, there is no merit in the appeal. The learned Counsel for the appellants stated that they may be given liberty to approach the respondents for extending their service till they attaining the age of superannuation. It is open to them to approach the respondents for such relief.



8. With the above observations, these Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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/ /2020

Sub Assistant Registrar(CS)

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To

The Secretary to Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (VI) Department,
Secretariat, Fort St. George, Chennai.

+1 CC to M/s.SPL.GP (SR-10787[F] dated 10/03/2020)

+7 CC to M/s.K.P.SANKARAKUMARAKURUPARAN, Advocate

W.A(MD)No.365, 366 and 368 to 372 of 2020

09.03.2020

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