



WEB COPY

W.A.(MD)No.374 of 2020:-

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM

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

and

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

W.A(MD)Nos.374 to 379 of 2020

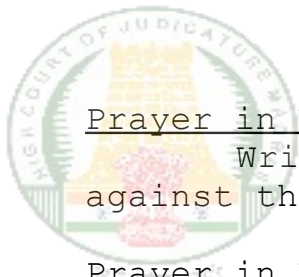
and

C.M.P.(MD)Nos.2654, 2655, 2656, 2658, 2659 and 2660 of 2020

P.Prakasam	... Appellant in WA(MD)No.374 of 2020
S.Muthukumaran	... Appellant in WA(MD)No.375 of 2020
P.Ravindran	... Appellant in WA(MD)No.376 of 2020
R.Murugan	... Appellant in WA(MD)No.377 of 2020
S.Saravanan	... Appellant in WA(MD)No.378 of 2020
K.Nagarajan	... Appellant in WA(MD)No.379 of 2020

Vs.

- 1.The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (VI) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
 - 2.The Managing Director,
Tamil Nadu State Marketting Corporation
Limited (TASMAC),
4th Floor, CMDA Towers-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
 - 3.The Senior Regional Manager,
Tamilnadu State Marketting Corporation (TASMAC),
Anna Nagar, Madurai - 625 020.
 - 4.The General Manager,
Tamil Nadu State Ex-Service Men's Corporation
Limited (TEXCO),
No.2, West Monda Street,
Srinagar Colony, Saidapet, Chennai.
 - 5.The District Manager,
Tamil Nadu State Marketing Corporation
Limited (TASMAC), Office of the District Manager, Tasmac
Near Collector Office, Karuvelanayakkanpatti,
Theni District.
- : Respondents in all WAs



Prayer in WA(MD)No.374 of 2020:

Writ Appeal is filed under Clause XV of Letter Patent Act against the order dated 14.02.2020 passed in WP(MD)No.952 of 2020.

Prayer in WA(MD)No.375 of 2020:

Writ Appeal is filed under Clause XV of Letter Patent Act against the order dated 14.02.2020 passed in WP(MD)No.957 of 2020.

Prayer in WA(MD)No.376 of 2020:

Writ Appeal is filed under Clause XV of Letter Patent Act against the order dated 14.02.2020 passed in WP(MD)No.955 of 2020.

Prayer in WA(MD)No.377 of 2020:

Writ Appeal is filed under Clause XV of Letter Patent Act against the order dated 14.02.2020 passed in WP(MD)No.920 of 2020.

Prayer in WA(MD)No.378 of 2020:

Writ Appeal is filed under Clause XV of Letter Patent Act against the order dated 14.02.2020 passed in WP(MD)No.963 of 2020.

Prayer in WA(MD)No.379 of 2020:

Writ Appeal is filed under Clause XV of Letter Patent Act against the order dated 14.02.2020 passed in WP(MD)No.956 of 2020.

Prayer in WP(MD)Nos. 952,957,955,920,963,956 of 2020 :

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court Calling for the records connected with the impugned order dated 06-01-2020 passed by the 5th Respondent and quash the same as illegal consequently directing the respondents to regularize the service of the petitioner as junior assistant in the 2nd Respondent corporation from the date of initial appointment till retirement in the light of G.O.Ms. No.44 dated 12-07-2018 issued by the 1st Respondent and to pay all other monitor benefits on par with the other employees of the 2nd Respondent corporation.

For Appellant

:Mr.Veera Kathiravan
Senior Counsel
for M/s.Veera Associates

For R1, R2, R3 and R5

: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 some time and after discharging from Defence

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



service, they were recruited on contract basis by M/s.Tamil Nadu Ex-Service Men's Corporation (TEXCO) and deployed in M/s.Tamil Nadu State Marketing Corporation Limited (TASMAC) on contract basis pursuant to the contract between TEXCO and M/s.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 agreement of TEXCO and 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 by filing Writ Petitions to regularise their service, as Junior Assistant in M/s.TASMAC with effect from the date of appointment, mainly on the ground that the services of temporary 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 and hence, the respondents should absorb the writ petitioners also in term of G.O.Ms.No.44, dated 12.07.2018. The Writ Petitions filed by the appellants were dismissed and hence, these Writ Appeals.

3.The appellants relying upon 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 there is 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.

4.1.Learned Senior Counsel appearing for the appellants submitted that respondents 2 and 3, while regularising the erstwhile employees of M/s.TASMAC in the post of Junior Assistant by relaxing qualification and age, refused to consider the appellants, who are employed on contract basis. Hence, it is submitted that this is a case of discrimination and there is violation of Articles 14 and 16 of Constitution of India in the matter of public employment. He contended further that the agreement between M/s.TASMAC and TEXCO is statutory in character and that therefore, the Writ Petition to enforce such agreement is maintainable. All other submissions of learned Senior Counsel is on the wrong motion that the appellants were engaged by M/s.TASMAC directly on contract basis.

4.2. When the appellants got employment on contract basis



under TAXCO, they cannot expect M/s.TASMAC to regularise their service, as an employee of M/s.TASMAC. The Writ Petitioners are a class by themselves and hence, they cannot claim the benefit of Government Order, which is applicable to persons, who were appointed by M/s.TASMAC on temporary basis. It is well settled that regularisation or permanent absorption cannot be claimed as matter of right. Since engagement of appellants is on the basis of contract between M/s.TASMAC and TEXCO, they cannot be considered as employees of M/s.TASMAC and their continuance in service solely depend upon the extension of contract.

5.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**. 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.

6.The learned Additional Advocate General 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.

7.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 M/s.TASMAC.

8.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 temporary employees of M/s.TASMAC cannot be compared with appellants as they 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 appeals. The learned Counsel for the appellants stated that they may be given liberty to approach the respondents for extending their service till they attain the age of superannuation. It is open to them to approach TEXCO, who in turn may request M/s.TASMAC to consider atleast individuals, who were in service for long number of years for renewing contract.

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

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

cmr

To

The Secretary to the Government,
Government of Tamil Nadu,
Home, Prohibition and Excise (VI) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

+9 CC to M/s.VEERA ASSOCIATES, Advocate (SR-11273,11002[F] dated 12/03/2020)

+1 CC to MR.B.JAMEEL ARASU, Advocate (SR-11241[F] dated 12/03/2020)

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KM (06.07.2020) 5P 12C