



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1510 of 2012

The Senior Administrative Officer,
Sugarcane Breeding Institute,
Coimbatore-641 007.

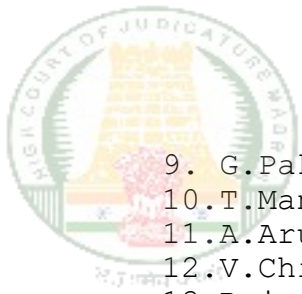
... Appellant

-vs-

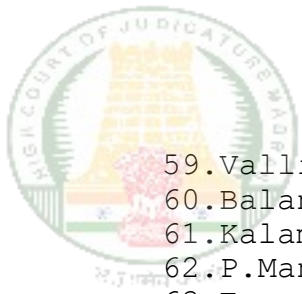
1. The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Sashtiri Bhavan,
Chennai-600 006.
2. The General Secretary,
Sugarcane Breeding Institute,
Employees Union, Coimbatore.
3. The Secretary,
Sugarcane Breeding Institute,
Farm Labour Union,
Coimbatore.
4. The Union of India
rep. by the Secretary,
Ministry of Agriculture,
Department of Agriculture Research &
Education, Krishi Bhavan,
New Delhi-110 001.
5. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.

(R4 and 5 were impleaded vide order
dated 29.11.2016 in M.P.1/2015 in
W.A.No.1510/2012)

6. K.Jeyaraman
7. N.Thangavelu
8. Vasanthamani



9. G.Pakiyam
- 10.T.Manikkam
- 11.A.Arukani
- 12.V.Chinnakannu
- 13.Rajammal
- 14.A.Suandaraj
- 15.S.Sarasu
- 16.R.Subbammall
- 17.Jeyammal
- 18.T.Mani
- 19.Thottakkal
- 20.Savithri
- 21.Aaurchami (Late) (Wife)
- 22.T.P.Shanta
- 23.S.Veeran
- 24.Bany
- 25.V.Prema
- 26.R.Devaraj
- 27.R.Nagarajan
- 28.R.Sugantha
- 29.P.Ponnammal
- 30.P.Rathna
- 31.K.Ponnammal
- 32.R.Maruthachalam
- 33.R.Lakshmi
- 34.N.Baladhandapani
- 35.Amuthavalli
- 36.R.Velumani
- 37.K.Rangasami
- 38.V.R.Palasami
- 39.S.Manikaraj
- 40.R.Sundarammal
- 41.K.Papathi
- 42.T.Chinnakannu
- 43.V.Aravind Das
- 44.N.Murthy
- 45.N.Thagavelu
- 46.Saraswathy
- 47.Rajalakshmi
- 48.M.Velan
- 49.K.Chinnasami
- 50.B.Ayyasami
- 51.P.K.Pappannan
- 52.Rathinammal
- 53.M.Sundarambal
- 54.R.Deivathal
- 55.Thulasiyammal
- 56.P.Ranganathan
- 57.K.Shanmugaraj
- 58.P.Mayilathal



59.Valli
60.Balan
61.Kalamani
62.P.Manian
63.Eeswari
64.Chinnamani
65.P.Kanakaraj
66.K.Saraswathi
67.Nanchappa Ponnammal
68.M.Nagarajan
69.P.Singaraj
70.P.Gopalakrishnan
71.K.Karupasami
72.Rajammal
73.M.Devaraj
74.Pathumavathi
75.Rukmani

... Respondents

(R6 to 75 impleaded vide order dated
06.02.2017 in M.P.No.2/2015 in WA.No.1510/2012)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.04.2011 made in W.P.No.10489/2006 by a learned Single Judge of this Court.

Prayer in W.P.No.10489/2006:

Writ petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari callint for the records relating to the award, dated 24.06.2005 passed in I.D.No.103 of 2002, on the file of the first respondent herein and to quash the same.

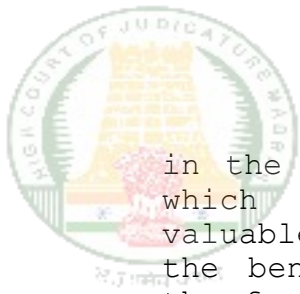
For Appellant	: Mr.S.Yashwath
For Respondents	: M/s.D.Bharathy for R2 Mr.V.Ajoy Khose for Mr.R.Krishnasamy for R3 Mr.Madhanagopal Rao, SPC for R4 Mr.P.Sathish for R5 Ms.Meera Gunasekar for R6 to 75

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Writ Appeal has been directed against the order dated 26.04.2011 made in W.P.No.10489/2006 by a learned Single Judge of this Court.

2. This Writ Appeal has brought up an interesting issue that when 258 employees were working for the past 30 to 40 years



in the Sugarcane Breeding Institute, Veera Keralam, Coimbatore, which is a Premier World Renowned Institution conducting valuable, fundamental and applied research on sugarcane crop for the benefit and betterment of the farming community, ignoring the fact that all these persons are working in the Agricultural University for more than 30 years as casual labourers, their services were not regularized, even on completion of 240 days of their work. Therefore, the Respondent Unions/respondents 2 and 3, finding no response to their representation dated 02.04.1999, raised an Industrial Dispute on 07.08.2000 and the conciliation proceedings ended in failure. Therefore, the matter was referred to the Central Government Industrial Tribunal-cum-Labour Court, Chennai. It is also an admitted fact that the Indian Council of Agriculture Research has passed an order to the effect that the services of the casual labourers who have put in atleast 240 days as Casual Labour during the period of two years can be appointed to regular establishment. It is also yet another fact that the Ministry of Personnel, Government of India, under O.M.No.49014/286/Estt. Dated 7.6.88 has reviewed the policy of recruitment of Casual Labour and persons on daily wages and has passed orders justifying the absorption of casual labourers against regular posts. Subsequently, 44 workmen were made as Casual Labourers eligible for higher wages. In the meanwhile, on 10.09.1993, the Department of Personnel & Training, New Delhi has framed a scheme for grant of temporary status and regularisation of Casual Labourers following the judgment of the Principal Bench of Central Administrative Tribunal, New Delhi in the case of S.Rajkamal and others vs. Union of India.

3. When the matter stood as above, opposing the same, several objections were raised by the Appellant Management contending that the dispute is not at all maintainable and therefore, liable to be dismissed for the reason that the appellant Management imparts post-graduate training in sugarcane research and development and this Institute functions under the administrative control of the Indian Council of Agricultural Research, which is a Central Government Autonomous Institute working under the Department of Agricultural Research and Education. Further, this Institute is engaged purely in agricultural research activities pertaining to sugarcane crops and does not have any profit motive. Although the appellant management has engaged casual labourers in various field operations from time to time, as and when required, presently 117 temporary status casual labourers and 133 casual labourers are engaged in various field operations. Since there was a ban imposed, it was pleaded that the appellant Management would consider the plea of regularization after lifting of the ban on recruitment and creation of additional posts by the Government and ICAR because the Senior Administrative Officer has no power



the service of the casual labourers and the creation of the additional posts and the consequential aspect of regularization of services are all falling on the 4th respondent, while confirming the findings and conclusions reached by the learned Industrial Tribunal for the sole reason that the members of the 2nd and 3rd respondent Unions were working continuously for more than 30 to 40 long years, directed the appellant to create additional posts and then to regularize their services. Aggrieved thereby, again the present appeal has been brought up before this Court.

7. Learned Counsel for the 5th respondent placed three fold submissions before us. Firstly, it was argued that when the appellant is a premier world renowned institution conducting valuable, fundamental and applied research on sugarcane crop for the benefit and betterment of the farming community for the past 30 years, accepting the need for regularizing the services of the casual labourers, on two occasions, details proposals have been sent to the 4th respondent. The 1st proposal was sent on 02.12.1999. The Director of the appellant Institute in his proposal dated 2.12.1999 addressing to the Deputy Director General (C.S.), I.A. III Section, Indian Council of Agricultural Research, New Delhi-110 001 requested that 60 posts may please be created as Supporting Staff Grade-I to regularize the Temporary Status Casual Labourers working in the Institute. Again, yet another proposal has been sent on 05.01.2019 renewing the request to create additional 182 posts of Skilled Support Staff for regularization of temporary status Casual Labourers. In the said request for regularization, it has been specifically mentioned that there will be no substantial financial implication for regularization of TSCLs as they are already drawing the wages equivalent to the salary of Skilled Support Staff. Again, they mentioned that unless the 4th respondent comes forward to regularize the service of the aforementioned workers, it would lead to several complications even in continuing the research work of the appellant institution.

8. However, learned Counsel appearing for the appellant stated that when the appellant institute has repeatedly brought to the notice of the 4th respondent, the need for regularization of the service of the workers, the 4th respondent was facing the ban imposed for regularization of the workmen. In view of the above aspect, regularization of the services of the workers belonging to the 2nd respondent union before the Industrial Tribunal could not be fulfilled. If the 4th respondent comes forward to create the requisite number of posts and consequentially, grants the permanent status, the appellant institute will not have any problem. Now the 4th respondent alone has to take final decision. Therefore, the direction issued by both the Learned Industrial Tribunal and the further



direction given by the learned Single Judge confirming the award of the Tribunal directing the appellant to regularize the services of the workmen belonging to the 2nd and 3rd respondent Unions is unsustainable as they do not have the power to sanction the posts and consequential regularization of their services.

9. Mr.Ajoy Khose, learned Counsel for Mr.R.Krishnasamy, learned Counsel for the 3rd respondent Union submitted that when the very same objection was raised before the learned Tribunal that in view of the ban imposed, the request for regularization cannot be considered, the learned Tribunal has rightly overruled the said objection, making it clear that all these employees were working for decades even before the ban was imposed. As a matter of fact, the ban came into picture only in the year 2000. Therefore, the present appeal deserves no merit, he pleaded.

10. We are also able to see from the Claim Petition and also the counter affidavit filed before the learned Tribunal that all these employees were working in the appellant institute from 1976 onwards. In support of this submission, the learned Counsels for the 2nd and 3rd respondent Unions have also drawn our notice to the latest typed set dated 30.06.2021 filed by the learned Counsel for the appellant wherein at page No.22 we are able to see that the members of the 2nd and 3rd respondents Unions were appointed starting from the year 1970 onwards, i.e. 1970, 1972, 1976, 1977, 1980, 1981, 1982, 1983, 1985, 1986, 1988. Therefore, the learned Tribunal has rightly come to the conclusion that when the members belonging to the 2nd respondent Union have been working from 1970 onwards, the so called ban imposed not to fill up any posts in the appellant institute in the year 2001 cannot be made applicable with retrospective effect to the workers appointed prior to the said ban imposed. Even the communication dated 05.06.2018 issued by the Section Officer, Indian Council of Agricultural Research, Krishi Bhavan, Dr.Rajendra Prasad Road, New Delhi, shows that there was a general ban on creation of posts by the Ministry of Finance vide OM.No.7(1)/E.Coord.2014 dated 29.10.2014. But the same proceedings clearly shows that despite the ban, the posts are created once these have been sanctioned in the EFC/SFC of the Institute because of the necessity to employ in the appellant Institute. Therefore, when there was no ban imposed by the 4th respondent on the date the employees working in the 2nd and 3rd respondent Unions completed 240 days, the learned Tribunal in its award has rightly held that the objections raised by the appellant that since there was a ban imposed by the 4th respondent, the request for regularization could not be completed was without any substance. This finding was also once again gone into by the learned Single Judge of this Court.



11. We are also able to see that when the appellant Institute is a premier world renowned institution conducting valuable, fundamental and applied research on sugarcane crop for the benefit and betterment of the farming community and carrying on the agricultural activities continuously for more than 30 years, it is solely depending continuous essential and important works being carried out by the members belonging to the respondent Unions 2 and 3. Although the members of the respondent Unions 4 and 5 were fighting before the learned Industrial Tribunal and subsequently before the learned Single Judge saying one aspect that in view of the general ban imposed by the 4th respondent, their services have not been regularised on completion of 240 days by the appellant Management, now the entire gamut of the matter has undergone a complete transformation.

12. Learned Counsel for the appellant also, as we mentioned earlier has brought to the notice of this Court that two proposals were sent to the 4th respondent, requesting repeatedly to sanction and subsequently regularise the services of the employees working even now as some of them reached the age of superannuation. Therefore, when more than 30 to 40 years of their prime life time has been spent working for the appellant agricultural institute which is a premier world renowned institution conducting valuable, fundamental and applied research on sugarcane crop for the benefit and betterment of the farming community, the argument of ban that came into picture in the year 2000 is nothing to do with the regularization of the workmen who are working from 1976 onwards. Secondly as mentioned above, since the appellant institute has made repeated requests to the 4th respondent, namely, the Secretary, Ministry of Agriculture, Union of India, Department of Agriculture Research and Education, New Delhi, to sanction the requisite posts for the regularization of the presently working employees, a direction has been given by the learned Industrial Tribunal to regularise their services only as against the appellant.

13. At this juncture, we are also able to see that the appellant is not having any power to create the posts for regularization and the only competent authority to create and sanction the requisite number of posts is only with the 4th respondent. While considering the similar issue in Nihal Singh and Others vs. State of Punjab and others reported in 2013 (14) SCC 65, the Hon'ble Apex Court has held that there is no justification on the part of the State to take a defence that after permitting the utilisation of the services of a large number of people like the employees belonging to the respondent 2 and 3 Unions for decades to say that there are no sanctioned posts to absorb the appellants. The relevant paragraph is extracted here under:



''20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of a large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need.''

Therefore, we are being fully satisfied with the argument advanced by the learned Counsel for the appellant, hereby shift the direction given by the learned Industrial Tribunal as well as the learned Single Judge of this Court from the appellant to the 4th respondent.

14. Accordingly, a direction is issued to the 4th respondent, namely, the Secretary, Union of India, Ministry of Agriculture, Department of Agricultural Research & Education, Krishi Bhavan, New Delhi, to consider the proposal sent by the appellant institute on two occasions, on the first occasion on 02.12.1999 requesting the 4th respondent to sanction 182 posts and the 2nd proposal on 05.01.2019 requesting to sanction 66 posts, taking into account that the appellant being a premier world renowned institution conducting valuable, fundamental and applied research on sugarcane crop for the benefit and betterment of the farming community and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this Order. Thereafter, the appellant Institute shall create additional posts and consequently regularise the services of the employees who are working for the past 4 decades.

15. At this stage, it is relevant to mention that since it is not in dispute that the members of the 2nd and 3rd respondent Unions were all sponsored through the employment exchange, the hurdle imposed in the Uma Devi's Case also will not come against the sanction and creation of the posts by the 4th respondent and the appellant herein.

16. With the above observations and directions, the Writ Appeal is partly allowed. No costs.

17. Post the matter after five weeks for 'reporting compliance'.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar



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1. The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Sashtiri Bhavan,
Chennai-600 006.
2. The General Secretary,
Sugarcane Breeding Institute,
Employees Union, Coimbatore.
3. The Secretary,
Sugarcane Breeding Institute,
Farm Labour Union,
Coimbatore.
4. The Secretary,
Union of India,
Ministry of Agriculture,
Department of Agriculture Research &
Education, Krishi Bhavan,
New Delhi-110 001.
5. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.

Copy To:-

The Section Officer,
Judicial Section,
High Court, Madras-104
(To list the matter under the caption
for reporting compliance)

+1cc to Mr.P.Yashwanth, Advocate, S.R.No. 30947
+1cc to Mr.P.sathish, Advocate, S.R.No. 30946
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No. 31562
+1cc to Mr.K.Raja Srinivas, Advocate, S.R.No. 31208

W.A.No.1510/2012

SSV (CO)
TE (17/12/2021)