

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.01.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.10419 of 2010

1.A.Kumar

2.K.Santhanakrishnan

... Petitioners

Vs.

1.The Government of Tamil Nadu

Rep. by the Secretary to Government
Adi Dravidar and Tribal Welfare Department,
Secretariat, Madras - 9.

2.The Managing Director,

Tamil Nadu Adi Dravidar Housing and
Development Corporation Limited,
Tirumangalam, Madras - 101.

... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to absorb the services of the petitioners as stated in GO.27 dated 24.01.2007 Finance (BPF) Dept Para no.IX and provide them with the service benefits from the date of absorption.

For Petitioners : Ms.B.S.Mithranesha
For Mr.V.Raghavachari

For Respondents : Mr.K.Magesh
Special Government Pleader

ORDER

The prayer sought for in the writ petition is to issue a writ of mandamus directing the respondents to absorb the services of the petitioners as stated in G.O.27 dated 24.01.2007 Finance (BPF) Dept Para No.IX and provide them with the service benefits from the date of absorption.

2.Both the petitioners had been original employees of the Tamil Nadu State Construction Corporation from where they were deputed to the second respondent i.e., Tamil Nadu Adi Dravidar Housing and Development Corporation Limited. Though initial one

year deputation was given to these petitioners, subsequently, for want of continuous engagement for five consecutive years and more, they had been given periodical extension of deputation by the second respondent. Since they had been working nearly about 10 years continuously, they sought for absorption at the second respondent itself. However, the said request seems to have not been considered.

3.The reason for non consideration is that, as per the relevant regulations, as claimed by the second respondent, those who want to get absorption as Assistants must have passed in four departmental test and then only they will be permanent employee of the second respondent Corporation and since these two petitioners have not completed the four departmental test, which was one of the qualification or essential requirement they had not been considered for absorption and this was the stand taken by the second respondent.

4.In this context, it is further to be noted that, the petitioners seems to have requested the second respondent to seek exemption from the Government for such an exercise of passing in four tests for those who come from deputation and worked for several years in the second respondent Corporation and in response to the same, the second respondent by proceedings dated 27.05.2008 intimated to the petitioners that, their plea of getting relaxation of the requirement of passing in four tests had already been forwarded to the Government and awaiting the decision of the Government, they communicated the same that, once the decision is taken by the Government, accordingly, they will act.

5.In the meanwhile, it is brought to the notice of this Court that, insofar as the second petitioner is concerned, he had been given such absorption by order dated 10.07.2017 with the condition to complete the four departmental test within two years period.

6.However, the same gesture has not been shown to the first petitioner one Kumar, who along with similarly placed two others, had given a representation even prior to filing of this writ petition on 16.07.2008, where, he has quoted that as per the TAHDCO's regulations, there are two criteria fixed for absorption of the persons permanently at second respondent . The first criteria is that, those who have worked for five years as Junior Assistants and completed the four departmental tests would be eligible to get absorption as Assistant at the second respondent. The second criteria is that, those who have come from other organisation by way of deputation, they would also be entitled to be absorbed as Assistant. Therefore, based on the second category, the first petitioner had given the said

representation dated 16.07.2008 to the respondents and the said representation also had not so far been considered.

7.Subsequently, it seems that, several such employees, who had been deputed to various other departments or undertakings of the Government, had been absorbed in the deputed organisation without insisting upon the precondition to complete the departmental test.

8.In this regard, the learned counsel appearing for the petitioners relied upon G.O.(Ms)No.172, Tamil Development, Religious Endowment and Information Department dated 01.07.2009, where, he relied upon Clause 9 of the G.O. stating that, such kind of insistment of completing the test successfully for getting absorption may not be needed, for those who come from other organisation by way of deputation and once they got absorption, subsequently they will be permitted to complete the test.

9.Therefore, the learned counsel appearing for the petitioners would submit that, the gesture shown by various organisations including the second respondent in respect of other employees especially in this case, the second petitioner, has not been shown to the first petitioner.

10.Only at this juncture, the aforesaid writ petition was filed and during the pendency of the writ petition, since such absorption was given to the second petitioner, he was permanently employed in the respondent organisation and subsequently retired on superannuation. However, insofar as the first petitioner is concerned, even though he retired on superannuation during the pendency of the writ petition, till his superannuation, he was not absorbed accordingly at the second respondent organisation for want of passing of the four departmental test as stated above and therefore, the learned counsel seeks indulgence of this Court insofar as the first petitioner alone and he submitted that, insofar as the second petitioner, the prayer sought for in this writ petition has become infructuous.

11.However, Mr.K.Magesh, learned Special Government Pleader appearing for the respondents has relied upon the following in the counter affidavit filed by the second respondent.

"6.This respondent submits that it does not by itself have any power to regularize/absorb the services of the petitioners without the petitioners passing the prescribed tests of this respondent. It is submitted that the taking a person on deputation is only a temporary feature. However, when it comes to the question of absorption to the post of the assistant,

the employees should necessarily pass the mandatory tests.

7.It is submitted that if the petitioners are absorbed as assistants without passing the mandatory tests the same would prejudicially affect the regular employees of this 2nd respondent corporation.

This respondent submits that the following persons who were also on deputation from TNSCC with this respondent had passed the mandatory tests of this 2nd respondent and were absorbed as Assistant by this 2nd respondent.

Sl. No.	Name (Tvl.)	Managing Director, TAHDCO, Proc. No. and date	Date of absorption
1	M.G.Kulasekaran	A1/3327/2002, dated 23.09.2008.	12.05.1999
2	N.Balakrishnan	A1/3327/2002, dated 12.03.2009	12.05.1999
3	E.Chinnaiah	A1/3327/2002, dated 21.05.2010	01.09.2003
4	S.P.Ganesan	A1/3327/2002, dated 21.05.2010	12.05.1999

8.This respondent submits that it not correct to state that appointment could be made by deputation. In this connection, it is submitted that the petitioners are only on deputation from TNSCC. It is submitted that the In G.O.Ms.No.27, Finance (Bureau of Public Enterprises) Department, dated 24.01.2007, under (v) item under Para 3 it has been clearly stated as follows:

(v) The employees to be absorbed in the undertakings/Government Departments will be given pay protection. However, they will not be given any service rights for the purpose of promotion, selection grade appointments, etc."

and would submit that, since the number of such deputationists, who have been on deputation to the second respondent organisation, had been given absorption only on successful completion of the four departmental tests and since the second petitioner has completed the departmental test, he has been given such absorption. Whereas the first petitioner since has not completed the departmental test, he was not considered for absorption and since no relaxation has been given by the Government as sought for, he is not entitled to get any

absorption. Moreover, since he has already retired peacefully from the service, nothing survives in his plea, he contended.

12.I have considered the submissions made by both sides and have perused the materials placed before this Court.

13.Insofar as the second petitioner is concerned, as submitted by the learned counsel for the petitioners, he has already been absorbed by the second respondent and as a permanent employee, he retired from service. Also, insofar as the second petitioner is concerned, there is no issue pending before this Court in this writ petition, hence his plea has become infructuous, is recorded.

14.Insofar as the first petitioner is concerned, as has been pointed out by the learned counsel for the petitioners, what gesture has been shown to the 2nd petitioner should have been shown to the first petitioner also as both are similarly placed. Infact for what specific reason such a benefit has not been extended to the first petitioner, has not been clearly spelt out in the averments made in the counter affidavit, as has been relied upon by the learned Special Government Pleader appearing for the respondents.

15.In that view of the matter, this Court feels that, the request made by the petitioners dated 16.07.2008 for invocation of second category or second criteria for absorption on the second respondent organisation can very well be considered in respect of the first petitioner also and accordingly, if ultimate orders are passed giving such absorption to the first petitioner, his service benefits can also be modified accordingly. In the result, this writ petition is disposed of with the following orders:

(i) The respondents are hereby directed to consider the representation of the first petitioner made on 16.07.2008 addressed to the Managing Director of the second respondent. While considering the same, the respondents shall take into account the second criteria fixed under the TAHDCO i.e., the second respondent's Regulations, where, those who have come from foreign service i.e. those who were on deputation can very well be considered for absorption, as if they have been working continuously till their superannuation. In this context, the requirement of or prerequisite of completion of four departmental test can be dispensed with as the same seems to have been dispensed with in respect of the similarly placed persons. The needful, as indicated above, shall be undertaken by the respondents within a period of twelve weeks from the date of receipt of a copy of

this order. The first petitioner is directed to send a copy of the representation dated 16.07.2008 along with the connected supporting documents in support of his plea to the respondents within a period of two weeks along with the copy of this order from the date of receipt of a copy of this order and on receipt of the same, the respondents shall do the needful as indicated above within the time frame.

16. With the above orders, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary to Government
Government of Tamil Nadu
Adi Dravidar and Tribal Welfare Department,
Secretariat, Madras - 9.

2. The Managing Director,
Tamil Nadu Adi Dravidar Housing and
Development Corporation Limited,
Tirumangalam, Madras - 101.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 3953

+1cc to the Government Pleader, S.R.No. 4036

W.P.No.10419 of 2010

GSM(CO)
GN(15/07/2021)