



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.41484 OF 2005

AND

WMP.NO.77 OF 2015

Mr.Vendalagan

... Petitioner

-vs-

1. Chennai Petroleum Corporation Limited
(A group Company of Indian Oil)
Formerly known as Madras Refineries Limited
Rep. by Managing Director (In charge)
No.552, Anna Salai,
Chennai 600 018.
 2. The Director (Operation),
Chennai Petroleum Corporation Limited
No.552, Anna Salai,
Chennai 600 018.
 3. The General Manager (HR and Company Secretary),
Chennai Petroleum Corporation Limited
Chennai 600 068.
 4. Madras Refineries Limited Industrial
Co-operative Service Society,
Rep by its Special Officer
Manali, Chennai-600 068.
- ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to absorb the petitioner as regular employee in the Chennai Petroleum Corporation Ltd, in the manufacturing department as Refinery operator, by giving credit to his past service and other benefits.

For Petitioner :Mr.Sivathanumohan

For Respondents:Mr.Gautham S.Raman

1 to 3 for M/s.Ramasubramanian Associates



O R D E R

This Writ Petition has been filed, seeking for a direction to the respondents 1 to 3 to absorb the petitioner as Regular Employee in the Chennai Petroleum Corporation Ltd, in the Manufacturing Department as Refinery Operator, by giving credit to his past service and other benefits.

2. The case of the petitioner is that he joined the fourth respondent Society on 06.12.1998. It is further stated that the petitioner belongs to Scheduled Caste community and the petitioner's father gave land to the first respondent at the time of starting of the plant and as per the terms of G.O.No.658 dated 29.06.1979, the Management will have to give one job to the Land Owner, whose land had been acquired, if the land is the sole subsistence of the family. It is further stated that certain land Donors filed Writ Petitions before this Court to provide them with jobs on the basis of the lands acquired by the Government for starting BHEL at Ranipet and this Court was pleased to pass orders in favour of the petitioners therein based on the said Government Order, but in the case of the petitioner, the respondent Management failed to provide a job. It is also stated that General Secretary of the Madras Refineries Workers' Union raised a Dispute before the Assistant Labour Commissioner, Shasthri Bhawan on the question of regularisation of the employees working in the society and the issue was referred to by the Government to the Central Government Industrial Tribunal in I.D.No.128 of 2001. In the meantime, W.P.No.6827 of 2001 was moved before this Court for restraining the Management from terminating the services of the employees, who had raised dispute before the Industrial Tribunal. It is averred that the petitioner has been working continuously for more than 17 years and whenever the vacancy arose, he applied to the Respondent for absorption, but the respondent failed to absorb him, without assigning any reason. Therefore, the petitioner has filed this Writ Petition for the aforesaid relief.

3. Learned counsel for the petitioner drew the attention of this Court the list of various persons, who have been absorbed in the service and submitted that since the petitioner joined services as early as in 1988, the case of the petitioner will also have to be considered.

4. Per contra, learned counsel appearing for the respondents 1 to 3 contended that it is true that there was a Settlement under Section 12 (3) way back in the year 1997, which provided absorption of some of the employees of the INDO SERVE Society into the roll of this Company. It is further contended that the Central Government Industrial Tribunal in I.D.No.128 of 2001



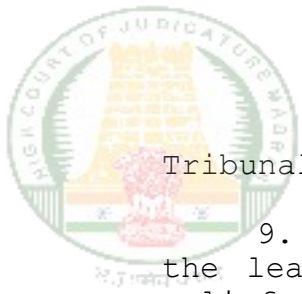
held that the Contract between the Chennai Petroleum Corporation and the fourth respondent is sham and nominal and the said finding has been reversed by this Court in W.P.No..6788 of 2001 and the Writ Appeal filed in W.A.No.1071 of 2012 as against the order of the learned Single Judge is pending before this Court. It is also contended that the Respondent Corporation never employed any person, who is beyond the age prescribed in the notification. However, insofar as the 1997 settlement is concerned, when a person is absorbed way back in 1997 from the Society, the age limit was not followed.

5. Heard both sides. Perused the materials available on record.

6. A reading of the aforesaid Government Order in G.O.Ms. No.656 referred to supra, would make it very clear that it is applicable to the State Government and not to the Central Government Establishment like the present one on hand. A glance at the list of workers, who have been absorbed would further make it very clear that the concession has been given to those employees, who were on the roll prior to 1985 and not thereafter. Admittedly, the petitioner joined the service of the fourth respondent in the year 1988 only and he made an application for absorption into Chennai Petroleum Corporation, pursuant to the Advertisement dated 21.09.2005. On the date of the application, the petitioner was over 44 years and that the maximum age limit, including relaxation for SC/ST was 35 years and that the petitioner was beyond the age limit prescribed for considering the case.

7. A careful reading of the 12 (3) settlement unearths the fact that the employees working in INDO SERVE Society would alone be absorbed into service of BHEL, which has been adhered to by the Management. When there is a cut-off date fixed and the petitioner wanted similar benefits extended to the employees of INDO SERVE Society, the remedy lies to the petitioner to raise an Industrial Dispute, questioning the 12(3) Settlement and not to file a Writ Petition for Mandamus.

8. Secondly, the order passed in I.D. has been reversed by this court in the Writ Petition and the matter is pending by way of Writ Appeal and the petitioner may not be a party to the said Writ Petition. In case the award of the Tribunal is restored in the Writ Appeal, the Petitioner will be entitled to permanency on par with others, provided he seeks for the very same relief and not a different one. It is seen that as per the application, the petitioner's date of birth is 21.11.1961 and the age of retirement for the Central Government Employees, including Society is 58. The petitioner is aged 59 as on date and hence, he cannot be put back in service, even if the order of the



Tribunal is restored.

9. In fine, finding much force in the submissions made by the learned counsel appearing for the respondents 1 to 3, the relief sought for by the Petitioner is rejected. However, it is needless to mention here, in safeguarding the rights of the petitioner that in case, the order of the Tribunal is restored and the petitioner is put in the similar platform, the applicable monetary and other benefits shall be extended to him.

10. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The Managing Director (In charge)
Chennai Petroleum Corporation Limited
(A group Company of Indian Oil)
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4. The Special Officer,
Madras Refineries Limited Industrial
Co-operative Service Society,
Manali, Chennai-600 068.

+1cc to M/s.Ramasubramanian Associates, SR.NO.34436

W.P.No.41484 of 2005

GJ(CO)
PM/17/11/2021