



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**

AND

THE HONOURABLE MRS. JUSTICE **S. ANANTHI**

W.A. (MD) Nos. 383 to 406 of 2020

and

**C.M.P. (MD) Nos. 2704, 2709, 2710, 2712 to 2717,
2719 to 2722, 2724, 2725, 2727 to 2731,
2733, 2734, 2736 & 2738 of 2020**

R. Gnana Prakasam : Appellant/Writ Petitioner in WA (MD) No. 383 of 2020
K. Pandiyarajan : Appellant/Writ Petitioner in WA (MD) No. 384 of 2020
S. Senthilrajan : Appellant/Writ Petitioner in WA (MD) No. 385 of 2020
B. Ganesan : Appellant/Writ Petitioner in WA (MD) No. 386 of 2020
S. Chinnachamy : Appellant/Writ Petitioner in WA (MD) No. 387 of 2020
J. Ramachandran : Appellant/Writ Petitioner in WA (MD) No. 388 of 2020
G. Muthukumar : Appellant/Writ Petitioner in WA (MD) No. 389 of 2020
S. Ramdass : Appellant/Writ Petitioner in WA (MD) No. 390 of 2020
P. Raja : Appellant/Writ Petitioner in WA (MD) No. 391 of 2020
M. Thangarajan : Appellant/Writ Petitioner in WA (MD) No. 392 of 2020
A. Ravi : Appellant/Writ Petitioner in WA (MD) No. 393 of 2020
S. Duraisamy Pandian : Appellant/Writ Petitioner in
WA (MD) No. 394 of 2020
R. Jawaharlal Nehru : Appellant/Writ Petitioner
in WA (MD) No. 395 of 2020
D. Murugan : Appellant/Writ Petitioner in WA (MD) No. 396 of 2020
R. Varadharajan : Appellant/Writ Petitioner in WA (MD) No. 397 of 2020
M. Murugavel : Appellant/Writ Petitioner in WA (MD) No. 398 of 2020
V. Ganeshan : Appellant/Writ Petitioner in WA (MD) No. 399 of 2020
K. Muthukumar : Appellant/Writ Petitioner in WA (MD) No. 400 of 2020
A. Devaraju : Appellant/Writ Petitioner in WA (MD) No. 401 of 2020
V. Pothiraj : Appellant/Writ Petitioner in WA (MD) No. 402 of 2020
C. Nicolas : Appellant/Writ Petitioner in WA (MD) No. 403 of 2020
M. Pandiaraj : Appellant/Writ Petitioner in WA (MD) No. 404 of 2020
K. Srinivasan : Appellant/Writ Petitioner in WA (MD) No. 405 of 2020
G. Rajendran : Appellant/Writ Petitioner in WA (MD) No. 406 of 2020

Vs.

1. The Secretary to 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 Marketing Corporation Ltd (TASMAC),
<https://hcservices.ecourts.gov.in/hcservices/>



4th Floor, CMDA Towers - II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.

3. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd (TASMAC),
Anna Nagar,
Madurai - 625 020.

4. The General Manager,
Tamil Nadu State Ex Service Men's Corporation Ltd (TEXCO),
No.2, West Monda Street,
Srinagar Colony, Saidapet,
Chennai.

: Respondents in all WAs

PRAYER IN WA(MD)No.383 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 929 of 2020.

PRAYER IN WA(MD)384 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 930 of 2020.

PRAYER IN WA(MD)385 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 943 of 2020.

PRAYER IN WA(MD)386 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 945 of 2020.

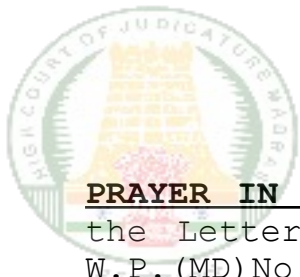
PRAYER IN WA(MD)387 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 928 of 2020.

PRAYER IN WA(MD)388 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 947 of 2020.

PRAYER IN WA(MD)389 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 954 of 2020.

PRAYER IN WA(MD)390 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 931 of 2020.

PRAYER IN WA(MD)391 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 934 of 2020.



PRAYER IN WA(MD)392 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.922 of 2020.

PRAYER IN WA(MD)393 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.958 of 2020.

PRAYER IN WA(MD)394 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.933 of 2020.

PRAYER IN WA(MD)395 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.921 of 2020.

PRAYER IN WA(MD)396 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.935 of 2020.

PRAYER IN WA(MD)397 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.919 of 2020.

PRAYER IN WA(MD)398 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.936 of 2020.

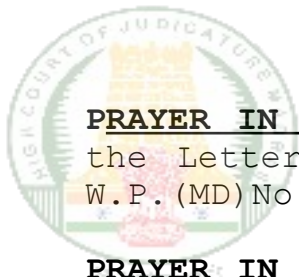
PRAYER IN WA(MD)399 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.926 of 2020.

PRAYER IN WA(MD)400 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.923 of 2020.

PRAYER IN WA(MD)401 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.938 of 2020.

PRAYER IN WA(MD)402 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.927 of 2020.

PRAYER IN WA(MD)403 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No.939 of 2020.



PRAYER IN WA(MD)404 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 924 of 2020.

PRAYER IN WA(MD)405 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 941 of 2020.

PRAYER IN WA(MD)406 of 2020: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 14.02.2020 made in W.P. (MD) No. 942 of 2020.

COMMON PRAYER IN WP(MD) Nos. 929, 930, 943, 945, 928, 947, 954, 931, 934, 922, 958, 933, 921, 935, 919, 936, 926, 923, 938, 927, 939, 924, 941, 942 of 2020:

Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the respondents to regularize the service of the petitioners as Junior Assistant in the 2nd Respondent Corporation from the date of initial appointment till the date of retirement in the light of G.O. Ms. No. 44 dt 12/07/2018 issued by the 1st respondent and consequently to pay all other monetary benefits on par with the other employees of the 2nd Respondent Corporation.

For Appellants : Mr. S. Malaikani
in all W.As
For Respondents : Mrs. J. Padmavathi Devi,
in all W.As Special Government Pleader for R.1
Mr. H. Arumugam,
Standing Counsel for R.2 & R.3

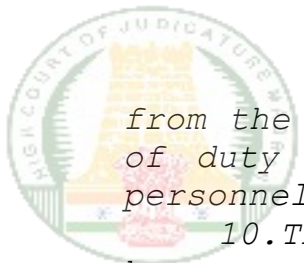
COMMON JUDGMENT

(Judgment of the Court was delivered by **M.M. SUNDRESH, J.**)

As all these appeals arise out of a common judgment, involving common and similar facts, they are taken up together and are accordingly disposed of by way of this common judgment.

2. Agreements were entered into between the respondents 2 & 3 on the one hand and the fourth respondent on the other hand. The fourth respondent is a Corporation catering to the needs of the Ex-Service Men. Whenever request is made on behalf of the respondents 2 & 3, the fourth respondent will furnish the members, being the Ex-Service Men, enrolled with it. This is followed by an agreement between the respondents 1 & 2 on the one hand and the fourth respondent on the other hand. The payment would be made to the fourth respondent, which, in turn, will go to the employee concerned. The following are the relevant clauses in such agreements:

"9. All claim bills raised by TEXCO, on wages shall be paid by the SRM, TASMAR, Madurai - 20 within 7 days of receipt so that the wages are paid to the above personnel within 7 days



from the END OF WAGE PERIOD, following the period of performance of duty based on the authorised attendance of the contracted personnel.

10. TEXCO shall be responsible for making wages as may become applicable to the contracted personnel provided to them as per the Tamil Nadu State Marketing Corporation Ltd., Chennai letter No.M1/4990/2017 dated 27 Jun 2019.

...

14. This agreement shall be terminated by either of the parties concerned by giving one months notice in writing or by payment of one month contractual dues in lieu or non payment of bills to TEXCO within 15 days of its due."

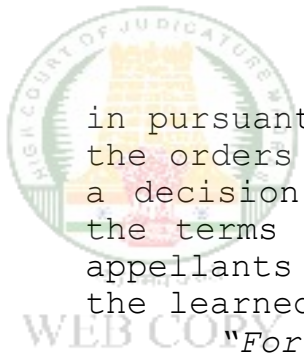
3. Thus, from the above, the fourth respondent is required to send the requisite number of persons, as sought for by the respondents 2 & 3. The agreement can also be terminated as aforesaid. No disciplinary proceedings can be initiated by the respondents 2 & 3 against the persons sponsored by the fourth respondent. In the event of the completion of the term of the agreement or termination, such persons will once again be sent for other employment by the fourth respondent. This is the scheme involved between those who enrolled with the fourth respondent and the said respondent.

4. On the request made by the respondents 2 & 3, number of persons were sent to work on a daily wage basis in the TASMACH shops. The contract was renewed from time to time. They have been working for a few years.

5. A policy decision was made by the first respondent to reduce the number of shops and roughly about 1000 shops were closed. In pursuant to the orders passed by the Hon'ble Apex Court, the shops located in the Highways were closed. Thereafter, the aforesaid order was modified giving the discretion and to work out the modalities to the respective States. This also led to reduction of many shops, as it involves relocation. Resultantly, there are more than 2000 shops, which are yet to be relocated.

6. In the meanwhile, the Government passed an order in G.O.Ms.No.44, Home, Prohibition and Excise (VI) Department, dated 12.07.2018, to fill up 500 vacancies of Junior Assistants in the TASMACH shops by redeployment of surplus shop personnel working in various shops, by relaxing the educational and age qualifications. Accordingly, they were put through a special test. Suffice it is to state that various persons were directly recruited upon being sponsored by the employment exchange. Therefore, there exists a master-servant relationship, though working on a contractual basis and 500 of those vacancies have been filled up.

7. Having found that more than 3000 shops are not running, both
<https://hcservices.ecourts.gov.in/hcservices/>



in pursuant to the policy decision of the Government and also due to the orders passed by the Hon'ble Apex Court leading to redeployment, a decision was made to terminate the agreements by complying with the terms contained thereunder, as aforesaid. Accordingly, all the appellants herein were terminated. They filed writ petitions before the learned Single Judge seeking the following reliefs:

"For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to issue a writ, order or direction or any other writ in the nature of a Writ of Mandamus, 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 consequently to pay all other monetary benefits on par with the other employees of the 2nd respondent corporation and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice."

8. The writ petitions filed were dismissed, after taking note of the terms contained in the agreements entered into between the respondents 2 & 3 as against the fourth respondent. Challenging the aforesaid orders passed, the present appeals have been filed.

9. When some of the connected appeals filed, came before a Division Bench of this Court, on an earlier occasion, in W.A. (MD) Nos.365 of 2020, etc., batch, by order dated 09.03.2020, the appeals filed were dismissed. The following paragraphs from the said judgment are extracted hereunder for better appreciation:

"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.

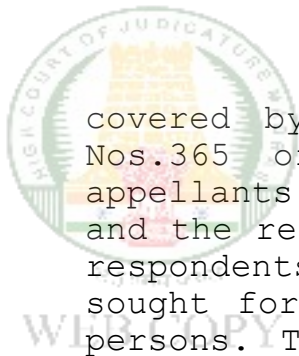
5. The learned Additional Advocate General has relied upon yet another judgment of Division Bench of this Court in the case of **Kovail Mandala Ex-Service and Family Welfare Association and another vs Union of India and others**, reported in (2013) 8 MLJ 548. Before the Division Bench, the request of 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 temporarily 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 appeals. 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."

10. Mr.S.Malaikani, learned Counsel appearing for the appellants submitted that even as per the Government Order passed in G.O.Ms.No.44, Home, Prohibition and Excise (VI) Department, dated 12.07.2018, there are other existing vacancies. The appellants have been working for quite number of years. There is not much of a difference between those, who have been absorbed and the appellants, as they were doing the same job. They have also registered themselves before the employment exchange. Thus, the concession extended to 500 of the temporary employees will have to be extended to the appellants.

11. Mr.H.Arumugam, learned Standing Counsel appearing for the respondents 2 & 3 submitted that the issue involved is already



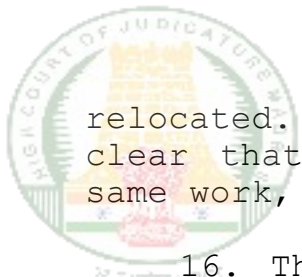
covered by the orders passed by the Division Bench in W.A.(MD) Nos.365 of 2020. There is no vested right available to the appellants. There was no privity of contract between the appellants and the respondents 2 & 3. At the time of sponsoring the names, the respondents 2 & 3 did not even know the persons. What has been sought for is the number of hands required and not the individual persons. They were not taken in pursuant to the seniority in the employment exchange. There was no master-servant relationship. The salary itself was paid to the fourth respondent. The agreement was duly terminated. In any case, the period of agreement itself is over. The appellants are not working under them, as of now. They can very well find an employment with any other third party, based upon the need.

12. The learned Standing Counsel further submitted that more than 3000 shops are not running as of now, both due to the policy decision and while giving effect to the orders of the Hon'ble Apex Court. Thus, there are surplus employees, who are yet to be given adequate employment, in view of the aforesaid situation. The Government Order passed in G.O.Ms.No.44, Home, Prohibition and Excise (VI) Department, dated 12.07.2018, refers to only one of the circumstances. Therefore, these appeals will have to be dismissed.

13. We have paid our anxious consideration to the rival submissions and also to the materials placed on record.

14. As rightly submitted by the learned Standing Counsel appearing for the respondents 2 & 3, there is no master-servant relationship involved. It is not as if these appellants were sponsored through the employment exchange, as sought for by the respondents 2 & 3. They have been sent in pursuant to the agreement between the respondents 2 & 3 and the fourth respondent. It is not as if they cannot get employment elsewhere. The fourth respondent is the agency which facilitates such employment to those, who enrolled with it. Therefore, the appellants cannot seek it as a matter of right for treating them on par with those 500 persons, who were given concession by way of a one time measure. Those 500 persons were working directly under the respondents 2 & 3 and therefore, disciplinary action can be taken against them, as well. Classification involving Article 14 of the Constitution of India has got its own flexibility. A rigid or strict classification can never be made. The parties are covered by the terms of the agreement. It is nobody's case that the agreement has been terminated wrongly.

15. When the respondents 2 & 3 are already having excess and surplus employees to be taken care of, the appellants cannot seek a writ of mandamus to treat them on par with those 500 persons. It is not in dispute that number of shops have been closed. About 1000 shops have been closed by way of a policy decision. Secondly, there are 2400 shops (approximately), which are involved in the process of



relocated. That is practically impossible. Therefore, it is very clear that there are abundant excess employees available for the same work, which was done by the appellants.

16. The Division Bench of this Court, as referred supra, has already considered all these aspects. We do not wish to reiterate the settled position of law with respect to a contractual employee vis-a-vis a Government undertaking. Similar is the position with those, who got back door entries, seeking regularization. There are no substantive posts available. The appellants were working on a daily wage basis. Thus, looking from any perspective, we are not in a position to find fault with the reasoning adopted by the learned Single Judge, followed by the conclusion arrived at. We are also in respectful agreement with the order of the Division Bench referred supra. In any case, the appellants can seek employment through the fourth respondent in any other undertaking / agency.

17. Thus, all these writ appeals stand dismissed. There shall be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

gk

To

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

+1 CC to M/s.SPL GP (SR-10159[F] dated 10/03/2021)

+3 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-9846[F] dated 10/03/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-9914[F] dated 10/03/2021)

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