



W.P.(MD) No.4020 of 2018

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 07.02.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

W.P.(MD) No.4020, 4022 and 4039 of 2018  
and WMP(MD) Nos.4159, 4161, 4198 of 2018, 16528, 16571 and  
16527/2020

**W.P.(MD) No.4020 of 2018**

D.Benjamin Franklin

...

Petitioner

-VS-

1.The General Officer Commanding  
Head Quarters Dakshin Bharat Area  
Island Grounds,  
Chennai.

2.The Director,  
NCC Directorate,  
TN P&AN  
Fort St. George,  
Chennai.

3.The Group Commander  
NCC Group HQ  
Promenade Road  
Cantonment  
Tiruchirappalli.



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4. The Commanding Officer,  
14 TN NCC  
Unit Run Canteen  
Dindigul 5

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari challenging the impugned order passed by the 4<sup>th</sup> respondent in No.331/1/URC/staff/corres/dated 25.01.2018 and quash the same.

**W.P.(MD) No.4022 of 2018**

R.K.Sakthirajan

...

Petitioner

-VS-

1. The General Officer Commanding  
Head Quarters Dakshin Bharat Area  
Island Grounds,  
Chennai.

2. The Director,  
NCC Directorate,  
TN P&AN  
Fort St. George,  
Chennai.

3. The Group Commander  
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Tiruchirappalli.



W.P.(MD) No.4020 of 2018

4. The Commanding Officer,  
14 TN NCC  
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... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari challenging the impugned order passed by the 4<sup>th</sup> respondent in No.331/1/URC/staff/corres/dated 25.01.2018 and quash the same.

**W.P.(MD) No.4039 of 2018**

A.Sheik Farid

... Petitioner

-VS-

1. The General Officer Commanding  
Head Quarters Dakshin Bharat Area  
Island Grounds,  
Chennai.

2. The Director,  
NCC Directorate,  
TN P&AN  
Fort St. George,  
Chennai.

3. The Group Commander  
NCC Group HQ  
Promenade Road  
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Tiruchirappalli.



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4.The Commanding Officer,  
14 TN NCC  
Unit Run Canteen  
Dindigul 5

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari challenging the impugned order passed by the 4<sup>th</sup> respondent in No.331/1/URC/staff/corres/dated 25.01.2018 and quash the same.

For Petitioner :Mr.T.Selvan

For Respondents :Mr.S.Jeyasingh

### **COMMON ORDER**

Since the issue arises in these writ petitions are one and the same, they were taken up together and disposed of by this common order.

2. The petitioners have filed these writ petitions challenging the impugned order of the 4<sup>th</sup> respondent dated 25.01.2018.

3. The case of the petitioners in nutshell is as follows:

The petitioners were appointed as Sales attendants in the 4<sup>th</sup>





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any time with one month's notice, they are also not entitled for compensation and there is no contract made with the employees. The terms and conditions of URC employees are based on a letter dated 11.08.2014, which reveals that the employees of the URC will remain on probation or temporary employees, unless it is made in writing as regular. However, as far as the petitioners are concerned, they are only temporary employees and are not made as regular employees. It is therefore, averred that since the petitioners are not Government servant and the said Unit is run by the non public fund, the remedy available to the petitioners is to approach the competent Court instead they filed these writ petitions.

5. The learned counsel for the petitioners would submit that the 4<sup>th</sup> respondent is coming under Type C as per Standard Operating Procedure and there are more than 9 permanent staff. He would further contend that the Unit Run Canteen is run by the defence department. It is his contention that without giving notice and without giving an opportunity of hearing, passing the impugned order of termination is per se illegal and requires interference.



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6. The learned counsel for the respondents would submit that when a similar issue came up before this Court in WP(MD) No.22474/2018, this Court dismissed the writ petition and since the petitioners herein are also similarly placed, he prays for dismissal of the writ petitions.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

8. The petitioners are claiming that the present impugned order is not in consonance with Regulation 6 of the terms and conditions of service. However, the Unit Run Canteen is not run out of the public fund and it is a private venture. However, when similar issue came up for consideration before this Court in W.P.(MD) No.22474/2018, this Court, by order dated 06.12.2018, following the decision of the Supreme Court, held that the employees of the URC is not a Government servant and the canteen management is not limb of the State and refused to interfere with the order impugned therein. The relevant portion of the order reads thus:

“3. This Court is not inclined to consider the



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facts averred in the petition and the counter made by the respondent. Since in view of the judgment passed by the Hon'ble Supreme Court while answering the reference made by the Division Bench, in the matter of **R.R.Pillai Vs. Commanding Officer, Head Quarters, S.A.C(U) and others**. The issue whether the employees of the military canteen will fall within the definition of Government servants and whether the military canteen is to be consider as limb of the State, same was answered in negative by the three Judges Bench. The relevant portion of the judgment is extracted:-

*“...11.It is to be noted that financial assistance is given, but interest and penal interest are charged. The URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants...”*

4. The learned counsel appearing for the petitioner would submit that, if the petitioner is not entitled to approach the High Court invoking Article 226 of the Constitution of India, what shall be the alternate remedy for him, in fact the remedy is available to raise an industrial dispute, if he is aggrieved by the dismissal order and challenge the dismissal order before the Labour Court. Article 226 is remedy, if there is no efficacies remedy available. In the matter of this nature,



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when there is a statute which governs the service disputes of the persons like the writ petitioner and Hon'ble Supreme Court has categorically held that employees of the Canteen are not Government servants and the canteen management is not limb of the State, Court cannot entertain writ petition.

9. Applying the said ratio, these writ petitions are also dismissed.

However, liberty is granted to the petitioners to approach the competent Court for appropriate remedy. No costs. Consequently connected Miscellaneous Petitions are closed.

07.02.2023

NCC : Yes/No

Index : Yes/No

RR



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**M.DHANDAPANI, J.**

RR

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