



W.P.(MD)Nos.6787 and 6788 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.6787 and 6788 of 2018

and

W.M.P.(MD)No.6497, 6498 of 2018 and 4733 and 4738 of 2020

B.Shivabalan ... Petitioner in W.P.(MD)No.6787 of 2018
D.Senthilkumar ... Petitioner in W.P.(MD)No.6788 of 2018

Vs.

1. The Director General,
NCC Directorate (Tamil Nadu, Puducherry and Andaman),
Fort St.George,
Chennai.

2. The Group Commander,
NCC Group HQ,
No.4, 1st Floor, Subramanian Building,
Promenade Road,
Cantonment,
Trichy.

3. The Commanding Officer,
14 (TN) BN NCC,
D.No.54, Anna Nagar,
Dindigul.

... Respondents
in both W.Ps'



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COMMON PRAYER : Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order dated 25.01.2018, passed by the third respondent in No.331/1/URC/Staff/Corres, quash the same.

For Petitioners
in both W.Ps' : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondents
in both W.Ps' : Mr.S.Jeyasingh

C O M M O N O R D E R

Since the issue arises in both 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 third respondent, dated 25.01.2018.

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

The petitioners were appointed as Billing Clerk / CIMS Operator and Assistant Salesman in the third respondent Unit Run Canteen in the year



W.P.(MD)Nos.6787 and 6788 of 2018

2008 and 2011 respectively. On completion of probation of one year, their services were regularized as temporary employees and after completing five years of service, their services were made permanent. They have now completed ten years of service and are still holding the said post. While so, without any notice, the services of the petitioners were terminated on 25.01.2018 and the said order has been served on the petitioners on 01.03.2018. Challenging the same, the petitioners are before this Court with these Writ Petitions.

4. Counter affidavit has been filed by the respondents, wherein, it is averred that Unit Run Canteen is not run by the defence department and the employees working therein are not the employees of the Government. It is further averred that URC is a private venture functioning from non public fund and the employees of the canteen are not Government servants as declared by the Full Bench of the Supreme Court in ***R.R.Pillai v. Commanding Officer*** reported in ***(2009) 13 SCC 311***. It is also averred that the appointment is purely on temporary basis and they can be terminated at any time with one month's notice, they are also not entitled for



W.P.(MD)Nos.6787 and 6788 of 2018

WEB COPY

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 third respondent is coming under Type C as per Standard Operating Procedure and there are more than 9 permanent staffs. 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.



W.P.(MD)Nos.6787 and 6788 of 2018

WEB COPY

6. The learned counsel for the respondents would submit that when a similar issue came up before this Court in WP(MD) No.22474 of 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 of 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:



W.P.(MD)Nos.6787 and 6788 of 2018

WEB COPY

“3. This Court is not inclined to consider the 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



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W.P.(MD)Nos.6787 and 6788 of 2018

is no efficacies remedy available. In the matter of this nature, 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.

13.02.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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